

EV 06-0137-C y/h Louis v. Lashbrook
Judge Richard L. Young

Signed on 04/18/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

SAMUEL LOUIS,)	
)	
Plaintiff,)	
vs.)	NO. 3:06-cv-00137-RLY-WGH
)	
TRAVIS LASHBROOK,)	
TRAVIS LIVERMORE,)	
DERRICK McGRAW,)	
TOTAL INTERIOR SYSTEMS -)	
AMERICA, LLC,)	
PRINCETON, CITY OF,)	
PRINCETON POLICE DEPARTMENT,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

SAMUEL LOUIS,)
)
Plaintiff,)
)
v.) 3:06-cv-137-RLY-WGH
)
TRAVIS LASHBROOK, TRAVIS LIVERMORE,)
DERRICK MCGRAW, TOTAL INTERIOR)
SYSTEMS-AMERICA, LLC, THE CITY OF)
PRINCETON, INDIANA, and THE PRINCETON,)
INDIANA POLICE DEPARTMENT,)
)
Defendants.)

**ENTRY ON DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Introduction

This matter is before the court on Defendants' Motion to Dismiss Plaintiff's Complaint filed November 16, 2006.

Background

This suit arises out of two incidents in which Plaintiff alleges that he was wrongfully arrested by three police officers from the Princeton, Indiana Police Department. Plaintiff alleges the following facts in his Complaint.

Total Interior Systems-America ("TISA") employed off-duty officers of the Princeton, Indiana Police Department ("Princeton P.D.") as private security guards. Typically, at least two off-duty policemen patrolled the TISA parking lot during the second shift. (Complaint ¶ 8). Defendants Travis Lashbrook ("Lashbrook"), Travis Livermore ("Livermore") and Derrick McGraw ("McGraw") are three of the officers that moonlighted at TISA as security guards, while using

uniforms, service weapons and motor vehicles issued by the Princeton P.D. (Complaint ¶ 9). The City of Princeton and the Princeton P.D. encourage this behavior by allowing its off-duty officers to use uniforms, service weapons and motor vehicles issued by the Princeton P.D. while moonlighting for TISA. (Complaint ¶ 10).

Plaintiff, Samuel Louis, came to the parking lot of TISA on June 7, 2005, to bring his girlfriend, Christie, her dinner. (Complaint ¶ 13). While in the TISA parking lot, despite explaining why he was there, Plaintiff was forced to leave by Defendants Lashbrook, Livermore and McGraw. (Complaint ¶¶ 16-20). Plaintiff returned to the TISA facility shortly after 10:00 p.m., on June 8, 2005; Livermore stopped his vehicle; Livermore then arrested Plaintiff for criminal trespass without probable cause or the authority of any warrant. (Complaint ¶ 23). Plaintiff verbally refused to be handcuffed by Livermore; in response, Livermore sprayed Plaintiff in the face with pepper spray or mace. (Complaint ¶ 24). Livermore directed McGraw to transport Plaintiff to the Gibson County Jail after being subdued and handcuffed by Lashbrook, Livermore, McGraw and a fourth individual. (Complaint ¶ 25). Later that evening, Livermore filed charges against Plaintiff for resisting law enforcement. (Complaint ¶ 26).

On June 10, 2005, or two days after his arrest, Plaintiff posted bond and was released from the Gibson County Jail. (Complaint ¶ 28). Later that same evening, at approximately 6:30 p.m., Plaintiff entered the Princeton, Indiana Post Office for the purpose of checking his post office box, which had not been emptied while he was in jail. (Complaint ¶ 29). Inside the post office, Plaintiff was accosted by Livermore, who was off-duty from the Princeton P.D. and dressed in street clothes. Livermore made comments to Plaintiff that he would “put him away for good.” (Complaint ¶ 30). Plaintiff did not speak to Livermore and attempted to ignore him. (Complaint ¶ 31). At that point, Livermore used his cell phone to telephone someone unknown to Plaintiff. (Complaint ¶ 32). After a short period of time, Livermore’s wife entered the post office and conversed with Livermore.

(Complaint ¶ 33).

As Plaintiff left the post office, Livermore followed him outside and continued to accost him in the parking lot. (Complaint ¶ 34). Plaintiff entered his own truck and drove away, but within five to six blocks, Lashbrook pulled Plaintiff over. It is not clear whether Lashbrook was on duty with the Princeton P.D. and/or TISA when he stopped Plaintiff on June 10, 2005. (Complaint ¶ 35). Shortly after Lashbrook pulled Plaintiff over, Livermore arrived at the scene of the vehicle stop. Livermore was still off-duty and wearing civilian clothes. (Complaint ¶ 36). Livermore searched Plaintiff's vehicle and arrested Plaintiff for intimidating a law enforcement officer. (Complaint ¶ 37).

On February 2, 2006, Plaintiff was acquitted on both counts – criminal trespass and resisting law enforcement – after a two-day trial in Gibson County Circuit Court, Cause No. 26C01-0506-CM-00062, the cause arising from Plaintiff's first arrest. (Complaint ¶ 39). The Gibson County Prosecutor later dropped all charges relating to Plaintiff's second arrest. (Complaint ¶ 40).

Defendants filed their Motion to Dismiss arguing that Plaintiff's Complaint should be dismissed because he has failed to state a claim against the individual Defendants or the municipal Defendants. The court disagrees and concludes that Defendants' motion must be **DENIED**.

Legal Standard

When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must accept as true all well-pleaded factual allegations contained in the Complaint, as well as the inferences reasonably drawn therefrom. *See Baxter by Baxter v. Vigo County School Corp.*, 26 F.3d 728, 730 (7th Cir. 1994). A dismissal is only appropriate if the plaintiff can establish no set of facts, even if hypothesized, consistent with the allegations of its complaint that would entitle it to relief. *See Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994),

cert. denied, 516 U.S. 1159 (1996). Moreover, the court must only examine the complaint, and not the merits of the lawsuit. *See Autry v. Northwest Premium Services, Inc.*, 144 F.3d 1037, 1039 (7th Cir. 1998).

Analysis

Defendants allege that Plaintiff's Complaint fails to state a claim and must be dismissed. To state a claim under 42 U.S.C. § 1983 Plaintiff must allege that he was deprived of a federal right, privilege or immunity, and that the deprivation occurred at the hands of an individual acting under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 638, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980). While Plaintiff's Complaint is not the most artfully pled complaint, it is adequate enough to give Defendants notice of the nature of his claims. Plaintiff's Complaint states that he is bringing suit pursuant to section 1983. He asserts that he was the victim of an arrest made without probable cause and that each of the individual Defendants took part in this allegedly unlawful arrest. (Complaint ¶¶ 23, 25). And, he also alleges that the arrests were made under color of state law. (Complaint ¶ 42). Therefore, Plaintiff's Complaint contains the minimum requirements necessary to state a 1983 claim against the individual police officers.

Plaintiff's Complaint is also adequate with regard to his claims against the City of Princeton and the Princeton P.D. In order for Plaintiff to bring suit against a municipality, he must allege that a custom, policy or practice of that municipality led to his constitutional deprivation. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Plaintiff has, in this instance, properly asserted that a custom, policy or practice of the Princeton P.D. led to his arrest without probable cause. (Complaint ¶¶ 45-46). Rule 12(b)(6) requires nothing more. Because Plaintiff's Complaint states valid claims against both the individual officers and the municipalities, Defendants' motion is without merit.

Conclusion

For the reasons outlined above, the Defendants' Motion to Dismiss Plaintiff's Complaint (Doc. # 15) is **DENIED**.

SO ORDERED.

Dated: April 18, 2007.

s/ *Richard L. Young*/dms (04/18/2007)

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